

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:LM:FSH:MAN:TL-N-6463-00
JSRubinstein

date:

to: Mr. Paul D. DeNard, Director, Field Operations, Financial Services and Healthcare

from: Area Counsel (Financial Services & Healthcare) (Area 1 - Manhattan)

subject: [REDACTED]
Proper Party to Issue a Determination Letter

DISCLOSURE STATEMENT

This advice may contain return information subject to I.R.C. § 6103. This advice may contain confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

This memorandum responds to your request for written advice concerning the appropriate party to issue a Determination Letter.

Conclusion

In this case, the Determination Letter should be issued and signed by Marsha Ramirez, Director, Field Operations, Financial Services & Healthcare. Although the request for a Determination Letter was sent to Paul D. DeNard, Director, Field Operation, Financial Services and Healthcare, in New York, Mr. DeNard is not the proper party to issue the Determination Letter since his

office does not have audit jurisdiction over the taxpayer's federal tax returns. Prior to the Service's reorganization, Determination Letters were issued by the District Director. Although the District Director is the proper party to issue the Determination Letter in this case, the position of District Director no longer exists. The duties of the District Director are now performed by the Director of Field Operations. Our office has contacted Ms. Miosi, of the National Office, who agrees that the Director of Field Operations in Illinois is the proper party in this case to issue and sign the Determination Letter.

Facts

This opinion is based on the facts set forth herein. It might change if the facts are determined to be incorrect. If the facts are determined to be incorrect, this opinion should not be relied upon.

[REDACTED] is an S corporation with assets in excess of \$ [REDACTED]. The taxpayer is a Delaware corporation, authorized and doing business in the State of Illinois as a bank holding company owning [REDACTED] percent of the stock of [REDACTED] community banks. [REDACTED] qualifies as a large and mid-size business in the Financial Services industry.

By letter dated [REDACTED], [REDACTED] ("the taxpayer"), through their attorneys [REDACTED], made a request to the Kansas City, Missouri, District Director for a Determination Letter. Even though the taxpayer is located in Illinois, they file their returns through the Kansas City Service Center, therefore, they made their request for a Determination Letter through the Kansas City, Missouri, District Director. The taxpayer made the Determination Letter request with the District Director for the Kansas City, Missouri district since they believed they have audit jurisdiction over the taxpayer's federal tax returns. The request for a Determination Letter should have been made with the Illinois District Director.

The Determination Letter request sought advice as to whether the taxpayer, a Subchapter S corporation, will terminate or disqualify its S-corporation status by authorizing and issuing [REDACTED] additional shares of common stock, identical in all respects to the presently issued and outstanding [REDACTED] shares, all of one class of \$ [REDACTED] par voting common stock, except that the new stock to be authorized and issued would be non-voting stock. The issue in this Determination Letter request is not an issue in an earlier return of the taxpayer or in a return for any year of a related taxpayer. In an attempt to follow up on their

request for a Determination Letter made to the Kansas City, Missouri, District Director on October 1, 1999, on July 10, 2000, [REDACTED] contacted the Kansas City Service Center requesting a response to their request for a Determination Letter.

On October 24, 2000, Cheryl Hammon, a Senior Associate Advocate with the Taxpayer Advocate Service in Springfield, Illinois, wrote to the Director of Financial Services and Healthcare regarding the taxpayer's Determination Letter request. Ms. Hammon discovered that the Kansas City Service Center had forwarded the request they received on July 10, 2000, to the National Office. Diane Miosi, (Branch Chief, Passthroughs and Special Industries) in the National Office, reviewed the request and determined that a Letter Ruling is not needed and that the matter is appropriate for the issuance of a Determination Letter by the District Director. Our office contacted Ms. Miosi who agreed that the Director, Field Operations in Illinois is the appropriate party to issue and sign the Determination Letter in this case. Ms. Miosi further stated that a formal Delegation Order delegating the authority of the District Director to the Director, Field Operations has not been issued.

Discussion

A Determination Letter is a written statement issued by the District Director that applies the principles and precedents previously announced by the national office to a specific set of facts. See Rev. Proc. 2000-1, 2000-1 I.R.B. 11. It is issued only when a determination can be made based on clearly established rules in the statute, a tax treaty, or the regulations, or based on a conclusion in a revenue ruling, opinion, or court decision published in the Internal Revenue Bulletin that specifically answers the question presented. *Id.* The function of issuing letter rulings is that of the national office. District Directors issue Determination Letters. I.R.M. (39)616.1.

District Directors will refer requests for Determination Letters to the national office under circumstances described in Rev. Proc. 2000-1, 2000-1 I.R.B. 11, 20. By letter dated July 10, 2000, [REDACTED], attorneys for the taxpayer, made a request to the Kansas City Service Center, the Service Center where the taxpayer files their federal income tax returns, for a Determination Letter. The Kansas City Service Center forwarded this request to the National Office. The National Office reviewed the request and determined that a Letter Ruling was not needed and that the matter is appropriately forwarded to the Director having jurisdiction for a Determination Letter pursuant

to I.R.M. (39)616.5.

It is appropriate to issue a Determination Letter in this case since the question presented is specifically answered by a statute or regulation. Internal Revenue Code §§ 1361(b)(1)(D) and 1361(c)(4) and the regulations issued with respect to I.R.C. § 1361(c)(4) specifically respond to the taxpayer's request for advice concerning whether the taxpayer will terminate or disqualify its S-corporation status by authorizing additional shares of stock, identical in all respects to the presently issued and outstanding shares, except the new stock to be authorized and issued would be non-voting stock. In addition, the issue in this Determination Letter request is not an issue in an earlier return of the taxpayer or in a return for any year of a related taxpayer. In this case the District Director in the district having audit jurisdiction over the taxpayer's federal tax returns would be the proper party to issue the Determination Letter. See I.R.M. (39)623.

Although the District Director is the proper party to issue the Determination Letter in this case the position of District Director no longer exists. Appendix E, of the Delegation of Authority - LMSB Position/Title Crosswalk, which was distributed to LMSB managers as part of the stand-up plan, indicates that the responsibilities of the District Director prior to June 4, 2000 are currently being performed by the Director of Field Operations. Our office contacted Ms. Miosi in the National Office who agreed that the Director of Field Operations is the appropriate party in this case to issue and sign the Determination Letter. In addition, Ms. Miosi stated that a formal Delegation Order delegating the authority of the District Director to the Director, Field Operations, has not been issued.

The IRS structure was previously built around districts and service centers which were charged with administering the entire tax law for every kind of taxpayer in a geographic area. See Modernizing Americas Tax Agency, Publication 3349, 33. As part of the I.R.S. Restructuring and Reform Act of 1998 ("RRA '98") the Service modernized the way they do business by structuring its operations into four major taxpayer segments: wage and investment; small business/self employed; large and mid-size business; and tax exempt government entities. The large and mid-size business segment (LMSB) is further divided based on the following industry classifications: Retailers, Food and Pharmaceutical; National Resources; Financial Services & Healthcare; Heavy Manufacturing, Construction & Transportation; and Communications, Technology & Media. Field offices based on the above industries are located throughout the nation.

In deciding who will issue the Determination Letter (post IRS restructuring) a determination needs to be made as to which business segment best meets the needs of the taxpayer. The taxpayer is an S corporation with assets in excess of \$ [REDACTED], therefore, it qualifies as a large and mid-size business. The large and mid-size business segment is further divided based on industry classification. The taxpayer is doing business in the state of Illinois as a [REDACTED] company owning [REDACTED] percent of the stock of [REDACTED], therefore, it meets the Financial Services and Healthcare industry specifications. The Financial Service and Healthcare industry is headquartered in New York with Field Offices located in New York, Illinois and California. The Illinois Field Office would have audit jurisdiction over the taxpayer's federal tax returns since the taxpayer's place of business is located in Illinois. Therefore, the Illinois field office would be the appropriate office to issue the Determination Letter in this case.

Based on the above information our office contacted Marsha Ramirez, Director of Field Operations in Downers Grove, Illinois. Her office is the proper office to respond to the request for a Determination Letter. James Rooney, Territory Manager, Chicago, Illinois provided a Delegation of Authority - LMSB Position/Title Crosswalk indicating that the responsibilities of the District Director prior to June 4, 2000 are currently being performed by the Director of Field Operations, i.e. Ms. Ramirez. Thus, the Determination Letter would be issued and signed by Ms. Ramirez, the Director, Field Operations and prepared by Mr. Rooney the Territory Manager. Mr. Rooney agreed that the files in this case should be forwarded directly to him.

If you have any questions regarding this matter, please contact Jody Rubinstein at (212)264-1595, extension 235.

ROLAND BARRAL
Area Counsel (FSH:MAN)

By: _____
MARIA T. STABILE
Associate Area Counsel (LMSB)

Attachments